

THIS DISPOSITION IS NOT  
CITABLE AS PRECEDENT  
OF THE TTAB

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Paper No. 9  
Bottorff

UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board

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In re Regina M. Stocco

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Serial No. 76404246

Douglas J. McEvoy of Gifford, Krass, Groh, Sprinkle,  
Anderson & Citkowski, P.C. for Regina M. Stocco.

Leslie L. Richards, Trademark Examining Attorney, Law  
Office 106 (Mary I. Sparrow, Managing Attorney).

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Before Hanak, Chapman and Bottorff, Administrative  
Trademark Judges.

Opinion by Bottorff, Administrative Trademark Judge:

Applicant seeks registration on the Principal Register  
of the mark DINING TO MEET YOU (in typed form) for services  
recited in the application as "social introduction agency  
services."<sup>1</sup>

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<sup>1</sup> Serial No. 76404246, filed May 6, 2002. The application is  
based on intent-to-use under 15 U.S.C. §1051(b).

The Trademark Examining Attorney has refused registration of applicant's mark on the ground that applicant's mark, as applied to the recited services, so resembles the mark DINE TO MEET YOU, previously-registered on the Principal Register (in typed form) for "dating services where dinners are arranged for groups of people at restaurants,"<sup>2</sup> as to be likely to cause confusion, to cause mistake, or to deceive. Trademark Act Section 2(d), 15 U.S.C. §1052(d).

When the refusal was made final, applicant filed this appeal. Applicant and the Trademark Examining Attorney have filed main appeal briefs, but applicant filed no reply brief, nor did applicant request an oral hearing. We affirm the refusal to register.

Our likelihood of confusion determination under Section 2(d) is based on an analysis of all of the probative facts in evidence that are relevant to the likelihood of confusion factors set forth in *In re E. I. du Pont de Nemours and Co.*, 476 F.2d 1357, 177 USPQ 563 (CCPA 1973). In considering the evidence of record on these factors, we keep in mind that "[t]he fundamental inquiry mandated by §2(d) goes to the cumulative effect of differences in the essential characteristics of the goods

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<sup>2</sup> Registration No. 2,124,044, issued December 23, 1997.

and differences in the marks." *Federated Foods, Inc. v. Fort Howard Paper Co.*, 544 F.2d 1098, 192 USPQ 24, 29 (CCPA 1976).

In this case, we find that applicant's mark is highly similar to the cited registered mark in terms of appearance, sound, connotation and overall commercial impression. Indeed, applicant's mark is identical to the cited registered mark but for applicant's replacement of the word DINE with the word DINING. This slight difference does not distinguish the marks. The marks create exactly the same commercial impression as applied to the relevant services, i.e., a pun combining the colloquial phrase "dying (or dyin') to meet you" and the concept of dinner and dining.

We also find that applicant's services are closely related and indeed legally identical to the services recited in the cited registration. The record shows that the Better Business Bureau, in its public listing of types or categories of businesses, uses "Dating & Social Introduction Services" as the name of one such type or category of business. This fact is evidence of the close commercial relationship between "dating services" like registrant's and "social introduction agency" services like applicant's.

Indeed, we find that the prior registrant's "dating services" are but a type or species of applicant's "social introduction agency services," and that applicant's and registrant's services therefore are legally identical. Applicant argues that her recitation of services is broad enough to encompass services other than the specific type of dating services covered by the prior registration. This contention, although true, is legally irrelevant. The dispositive fact here is that applicant's recitation of services encompasses the services recited in the cited registration, and that the services therefore are legally identical. That is, applicant's registration rights in her mark, if that mark were to be registered for the services recited in her application, would include the right to use the mark in connection with services identical to those recited in the cited registration.

There are no restrictions or limitations as to trade channels or classes of purchasers in either applicant's application or in the cited registration. We therefore presume that both applicant's and registrant's services are marketed in all normal trade channels and to all normal classes of purchasers for such services. See *In re Elbaum*, 211 USPQ 639 (TTAB 1981). Given the legal identity of the respective services, we find that the trade channels and

classes of purchasers for them likewise are legally identical and overlapping.

In summary, we find that applicant's mark is highly similar and indeed essentially identical to the cited registered mark in terms of overall commercial impression, and that applicant's services encompass and are legally identical to the services recited in the cited registration. We conclude that a likelihood of confusion exists, and that registration of applicant's mark is barred by Trademark Act Section 2(d).

Decision: The refusal to register is affirmed.